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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Rafael Arroyo

Plaintiff,

v.

**AVR San Jose Downtown Hotel
LLC**, a Delaware Limited Liability
Company;

Defendant,

Case No. 5-21-cv-00342-BLF

**First Amended Complaint For
Damages And Injunctive
Relief For Violations Of:
Americans With Disabilities Act;
Unruh Civil Rights Act**

Plaintiff Rafael Arroyo complains of AVR San Jose Downtown Hotel LLC, a Delaware Limited Liability Company; ("Defendant"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic. He uses a wheelchair for mobility.
2. Defendant AVR San Jose Downtown Hotel LLC, a Delaware Limited Liability Company owns and operates the AC Hotel by Marriott San Jose

1 Downtown located at 350 W. Santa Clara St., San Jose, California currently
2 and at all times relevant to this complaint.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein, is
8 responsible in some capacity for the events herein alleged, or is a necessary
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
10 the true names, capacities, connections, and responsibilities of other
11 Defendants are ascertained.

12 **JURISDICTION:**

13 4. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 5. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23 **PRELIMINARY STATEMENT**

24 7. This is a lawsuit challenging the reservation policies and practices of a
25 place of lodging. Plaintiff does not know if any physical or architectural
26 barriers exist at the hotel and, therefore, **is not claiming that that the hotel**
27 **has violated any construction-related accessibility standard.** Instead,
28 this is about the lack of information provided on the hotel's reservation

1 website that would permit plaintiff to determine if there are rooms that would
2 work for him.

3 8. After decades of research and findings, Congress found that there was
4 a “serious and pervasive social problem” in America: the “discriminatory
5 effects” of communication barriers to persons with disability. The data was
6 clear and embarrassing. Persons with disabilities were unable to “fully
7 participate in all aspects of society,” occupying “an inferior status in our
8 society,” often for no other reason than businesses, including hotels and
9 motels, failed to provide information to disabled travelers. Thus, Congress
10 decided “to invoke the sweep of congressional authority” and issue a “national
11 mandate for the elimination of discrimination against individuals with
12 disabilities,” and to finally ensure that persons with disabilities have “equality
13 of opportunity, full participation, independent living” and self-sufficiency.

14 9. As part of that effort, Congress passed detailed and comprehensive
15 regulations about the design of hotels and motels. But, as importantly,
16 Congress recognized that the physical accessibility of a hotel or motel means
17 little if the 61 million adults living in America with disabilities are unable to
18 determine which hotels/motels are accessible and to reserve them. Thus,
19 there is a legal mandate to provide a certain level of information to disabled
20 travelers.

21 10. But despite the rules and regulations regarding reservation procedures,
22 a 2019 industry article noted that: “the hospitality sector has largely
23 overlooked the importance of promoting accessible features to travelers.”

24 11. These issues are of paramount important. Persons with severe
25 disabilities have modified their own residences to accommodate their unique
26 needs and to ameliorate their physical limitations. But persons with disabilities
27 are never more vulnerable than when leaving their own residences and having
28 to travel and stay at unknown places of lodging. They must be able to ascertain

1 whether those places work for them.

2 **FACTUAL ALLEGATIONS:**

3 12. Plaintiff planned on making a trip in April of 2021 to the San Jose,
4 California, area.

5 13. He chose the AC Hotel by Marriott San Jose Downtown located at 350
6 W. Santa Clara St., San Jose, California because this hotel was at a desirable
7 price and location.

8 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in
9 his ability to, stand, ambulate, reach objects, transfer from his chair to other
10 equipment, and maneuver around fixed objects.

11 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
12 information about accessible features in hotel rooms so that he can confidently
13 book those rooms and travel independently and safely.

14 16. On December 19, 2020, while sitting bodily in California, Plaintiff
15 went to the AC Hotel by Marriott San Jose Downtown reservation website at
16 <https://www.marriott.com/hotels/travel/sjcac-ac-hotel-san-jose-downtown/>
17 seeking to book an accessible room at the location.

18 17. This website reservation system is owned and operated by the
19 Defendants and permits guests to book rooms at the AC Hotel by Marriott San
20 Jose Downtown.

21 18. There are very few, if any, accessible details identified. The website
22 mentions a host of common areas, but merely states that they are "accessible"
23 without any further details.

24 19. These scant details are nowhere near enough to permit a profoundly
25 disabled wheelchair user to have any confidence or come to any conclusions
26 about whether any given hotel room works for him or her.

27 20. Claiming something is "accessible" is a conclusion or opinion. Persons
28 with disabilities do not have to rely upon the naked judgment or conclusions of

1 the hotel. The ADA specifically mandates that hotels must provide specific
2 information to persons booking their rooms. Under the ADA, the hotel must
3 not only identify but “*describe* accessible features in the hotels and guest rooms
4 offered through its reservations service *in enough detail* to reasonably permit
5 individuals with disabilities to *assess independently* whether a *given* hotel or
6 guest room meets *his or her* accessibility needs.” 28 C.F.R. 36.302(e)(1)(ii)
7 (emphasis added to key words).

8 21. Plaintiff found that there was insufficient information about the
9 accessible features in the “accessible rooms” at the Hotel to permit him to
10 assess independently whether a given hotel room would work for him. Other
11 than mentioning the hotel room doors are 32”, an adjustable shower wand,
12 bathtub grab bars, and that the toilet seat is at “wheelchair height” (whatever
13 that means), there are no specifics mentioned for mobility features in the
14 accessible rooms.

15 22. For example, Plaintiff cannot transfer from his wheelchair to a toilet
16 unless there are grab bars at the toilet to facilitate that transfer. But the Hotel
17 reservation website does not provide any information about the existence of
18 grab bars for the accessible guestroom toilets. This is critical information for
19 the plaintiff. All the website mentions is “bathroom grab bars”. This is not
20 helpful since there are several types of grab bars in a bathroom. This statement
21 could mean toilet grab bars, shower grab bars, or tub grab bars. However,
22 Defendant’s vague statement regarding “bathroom grab bars” leaves Plaintiff
23 guessing if he can use this hotel room.

24 23. As another example, Plaintiff has had tremendous difficulty with using
25 lavatory sinks in the past because sinks were cabinet style sinks or had low
26 hanging aprons that did not provide knee clearance for a wheelchair user to
27 pull up and under or, alternatively, where the plumbing underneath the sink
28 was not wrapped with insulation to protect against burning contact to his

1 knees. Here, the Hotel website provides simply states “vanities accessible”.
2 But what does this mean? Is it referring to the counter height? The knee
3 clearance? The drain pipes and waterlines that need to be wrapped? Defendant
4 can clear up this confusion with a simple short sentence.

5 24. As another example, Plaintiff needs to know that the bed has a
6 compliant clear space next to it so he can safely transfer from his wheelchair to
7 the bed. Here the Hotel website provides no information about the
8 accessibility of the clear space next to the bed. This is very basic information
9 that should be included on the website.

10 25. This small list of items are the bare necessities that Plaintiff must know
11 to make an independent assessment of whether the “accessible” hotel room
12 works for him. These things comprise the basics of what information is
13 reasonably necessary for Plaintiff (or any wheelchair user) to assess
14 independently whether a given hotel or guest room meets his or her
15 accessibility needs.

16 26. Other accessibility requirements such as slopes of surfaces, whether the
17 hand-held shower wand has a non-positive shut off valve, the temperature
18 regulator, the tensile strength and rotational design of grab bars, and so many
19 more minute and technical requirements under the ADA are beyond what is a
20 reasonable level of detail and Plaintiff does not expect or demand that such
21 information is provided.

22 27. But because the Defendants have failed to identify and describe the core
23 accessibility features in enough detail to reasonably permit individuals with
24 disabilities to assess independently whether a given hotel or guest room meets
25 his accessibility needs, the Defendants fail to comply with its ADA obligations
26 and the result is that the Plaintiff is unable to engage in an online booking of
27 the hotel room with any confidence or knowledge about whether the room will
28 actually work for him due to his disability.

1 28. This lack of information created difficulty for the Plaintiff and the idea
2 of trying to book this room -- essentially ignorant about its accessibility --
3 caused difficulty and discomfort for the Plaintiff and deterred him from
4 booking a room at the Hotel

5 29. As a veteran ADA tester, Plaintiff is aware that he needs to return to the
6 hotel website and to patronize the hotel in order to have standing to see that
7 the hotel comes into compliance with the ADA's mandate regarding its
8 reservation policies. Thus, plaintiff will use the hotel's website reservation
9 system to book a room and travel to the hotel when it has been represented to
10 him that the hotel's website reservation system is accessible. Plaintiff will be
11 discriminated against again, i.e., be denied his lawfully entitled access, unless
12 and until the defendant is complies with the law.

13 30. Plaintiff would like to patronize this hotel but is deterred from doing so
14 because of the lack of detailed information through the hotel's reservation
15 system.

16 31. Plaintiff will travel to the San Jose area on a regular and ongoing basis
17 and will patronize this Hotel once it has been represented to him that the
18 Defendant has changed its policies to comply with the law and to determine if
19 the Hotel is physically accessible as well as complying with required
20 reservation procedures. Plaintiff will, therefore, be discriminated against
21 again, i.e., be denied his lawfully entitled access, unless and until the
22 Defendant is forced to comply with the law.

23 32. Plaintiff has reason and motivation to use the Defendant's Hotel
24 reservation system and to stay at the Defendant's Hotel in the future. Among
25 his reasons and motivations are to assess these policies and facilities for
26 compliance with the ADA and to see his lawsuit through to successful
27 conclusion that will redound to the benefit of himself and all other similarly
28 situated. Thus, Plaintiff routinely revisits and uses the facilities and

1 accommodations of places he has sued to confirm compliance and to enjoy
 2 standing to effectuate the relief promised by the ADA.

3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 4 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 5 Defendants.) (42 U.S.C. section 12101, et seq.)

6 33. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 7 again herein, the allegations contained in all prior paragraphs of this
 8 complaint.

9 34. Under the ADA, it is an act of discrimination to fail to make reasonable
 10 modifications in policies, practices, or procedures when such modifications
 11 are necessary to afford goods, services, facilities, privileges advantages or
 12 accommodations to person with disabilities unless the entity can demonstrate
 13 that taking such steps would fundamentally alter the nature of the those goods,
 14 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
 15 12182(B)(2)(A)(ii).

16 35. Specifically, with respect to reservations by places of lodging, a
 17 defendant must ensure that its reservation system, including reservations
 18 made by “any means,” including by third parties, shall:

- 19 a. Ensure that individuals with disabilities can make
 20 reservations for accessible guest rooms during the same
 21 hours and in the same manner as individuals who do not
 22 need accessible rooms;
- 23 b. Identify and describe accessible features in the hotels and
 24 guest rooms offered through its reservations service in
 25 enough detail to reasonably permit individuals with
 26 disabilities to assess independently whether a given hotel
 27 or guest room meets his or her accessibility needs; and
- 28 c. Reserve, upon request, accessible guest rooms or specific

1 types of guest rooms and ensure that the guest rooms
 2 requested are blocked and removed from all reservations
 3 systems.

4 *See 28 C.F.R. § 36.302(e).*

5 36. Here, the defendant failed to modify its reservation policies and
 6 procedures to ensure that it identified and described accessible features in the
 7 hotels and guest rooms in enough detail to reasonably permit individuals with
 8 disabilities to assess independently whether a given hotel or guest room meets
 9 his or her accessibility needs and failed to ensure that individuals with
 10 disabilities can make reservations for accessible guest rooms during the same
 11 hours and in the same manner as individuals who do not need accessible
 12 rooms.

13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
 14 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 15 Code § 51-53.)**

16 37. Plaintiff repleads and incorporates by reference, as if fully set forth
 17 again herein, the allegations contained in all prior paragraphs of this
 18 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
 19 that persons with disabilities are entitled to full and equal accommodations,
 20 advantages, facilities, privileges, or services in all business establishment of
 21 every kind whatsoever within the jurisdiction of the State of California. Cal.
 22 Civ. Code §51(b).

23 38. The Unruh Act provides that a violation of the ADA is a violation of the
 24 Unruh Act. Cal. Civ. Code, § 51(f).

25 39. Defendants’ acts and omissions, as herein alleged, have violated the
 26 Unruh Act by, *inter alia*, failing to comply with the ADA with respect to its
 27 reservation policies and practices.

28 40. Because the violation of the Unruh Civil Rights Act resulted in difficulty

1 and discomfort for the plaintiff, the defendants are also each responsible for
2 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

3 **PRAAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual
11 damages and a statutory minimum of \$4,000 for each offense.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
13 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

14 4. For equitable nominal damages for violation of the ADA. See
15 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
16 and any other equitable relief the Court sees fit to grant.

19 Dated: March 15, 2021

CENTER FOR DISABILITY ACCESS

21 By: /s/ Russel Handy

22 Russell Handy, Esq.

23 Attorneys for Plaintiff